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PRIME CONTRACT CONSIDERATIONS		
ISSUE	OWNER CONSIDERATION	CONTRACTOR CONSIDERATION
Change Orders		
Proceeding with Change Order Work	Owner will want language that reflects contractor cannot proceed with change order work unless a written change order is executed or owner issues a written construction change directive or else contractor waives right to compensation and time associated with change.	Contractor will want less restrictive language to preserve rights associated with disputed change order work it may perform without any "waiver" argument from the owner.
Timeliness / Notification	Owner will want language that says that contractor must notify owner of a change to its work, whether that change includes time or money (e.g., a claim), within a specific time of learning of change or receiving directive from owner to price or perform change or else the contractor waives its right to compensation and time associated with change.	Contractor will want specific time and submission requirements to be <i>reasonable</i> and will not want to be burdened by onerous (unrealistic) notification provisions that may support a "waiver" argument for the owner. Further, contractor will want specific time period to be based on when it <i>reasonably</i> should have learned of change.
Notice	Owners typically like notices to be formal and served via certified mail or overnight delivery to person signing contract.	Contractor will want e-mails to constitute notice since most business and communications are through e-mail.
Claims		
Scope	A claim is a demand, typically in writing, for additional compensation, time, or both. A claim could be a disputed change order request, a dispute regarding additional time, a dispute regarding a delay, etc. Owners will want the scope of the claim language to serve as added protection to change order performance and notification language.	Contractor needs to understand any distinction in contract between submission of a claim and submitting a change order request, if any. For example, if contractor submits change order request and this request is denied, does contractor need to submit a claim within specific time to owner to preserve right to issue.
Timeliness / Notification	Owner will want claims to be submitted within a specific time of learning of occurrence or learning of event giving rise to claim or else claim is waived.	Contractor will want specific time and submission requirements to be <i>reasonable</i> and will not want to be burdened by onerous (unrealistic) notification provisions that may support a "waiver" argument for the owner. Further, contractor will want specific time period to be based on when it <i>reasonably</i> should have learned of event giving rise to claim.
Resolution	This is discussed below in dispute resolution section, but contract may require claim to be resolved by project neutral, initial decision maker, dispute resolution board, or the like. Owner may want architect to be a part of the process since the owner knows that architect's allegiance will be towards owner (especially regarding issues pertaining to the design). This consideration is based on size and complexity of project.	Similar to owner, this consideration is based on size and complexity of project. However, contractor will not want architect to be involved in decision-making process.
Conditions Precedent to Payment		
Waivers and Releases of Liens	Owner will want waivers and releases of lien from the contractor and all subs and suppliers.	Contractor will want to limit subcontractor and supplier lien waivers and releases to those that preserved lien rights by serving a Notice to Owner per Florida Statute s. 713.06. Or, if the contractor furnished a payment bond, it will want to eliminate this condition precedent since contractor provided a bond that exempts owner's property from subcontractor and supplier liens.
Waivers and Releases of Claims	Owner will want contractor to waive and release all claims through the date of the release / payment (such as claims for delay, additional compensation, additional time, etc.).	Contractor needs to ensure that it has ability to carve out exceptions to ANY release it provides owner for those items it is not prepared to release.
Payment Affidavits	Owner may want contractor to furnish payment affidavits (analogous to affidavit in Florida Statute s. 713.06).	If contractor furnished a payment bond, contractor will likely want to eliminate this condition precedent. If contractor did not, it will want to ensure affidavit is <i>reasonably</i> worded to comport with Florida Statute s. 713.06.
Other Required Documentation	Owner will likely want other documentation as a condition precedent to payment.	Contractor needs to ensure such documentation is reasonable.
Priority of documents		
Priority	In the event of conflicts, which document controls? This should be carefully considered. Owner may want contract documents to be read complementary and in the event of a conflict the most onerous provision applies. Owner may want the contract and its prepared scope of work to control.	Contractor will want its scope of work and any assumptions and clarifications to take priority as it pertains to scope of work. Contractor will not want the most onerous provision to govern a conflict, especially if that issue is addressed in its scope of work or assumptions. Also, contractor will not want to assume liability for design errors and omissions.
Consequential Damages		
Waiver	Does contract contain waiver of consequential damages. From owner's perspective, if contract includes such waiver, there needs to be a liquidated damages provision. Also, liquidated damages are easier to prove than actual damages associated with delay to substantial completion.	Contractor will want waiver of consequential damages to specifically include owner's lost profits and loss of use damages.
Carve-Outs	If there are latent defects post-completion, the latent defect may cause the owner to lose profit or use of property. Owner may want to be able to recover consequential-type damages for this issue post-completion.	Contractor will want such damages limited to the extent such damage is covered by insurance. Otherwise, this could be a huge risk for contractor that is not covered by insurance.
Differing Site Conditions		
Timeliness / Notification	Owner will want contractor to provide notice of differing site condition within a specific time of learning of issue or else issue will be waived.	Contractor needs to ensure time period is <i>reasonable</i> and that it is based on when it <i>reasonably</i> should have discovered issue to avoid "waiver" argument.
Site Conditions	Owner will want to include language that contractor has inspected the site and is familiar with conditions of site. Owner will also want to include language that disclaims any documentation or testing it furnished relating to site in order to remove any argument that the Contract Documents affirmatively indicated site conditions.	Contractor shall consider such language carefully so that the language does not water down any differing site conditions language in the contract.
Dispute Resolution		
Venue / Forum Selection	If a lawsuit is initiated, what is the venue for the dispute and is venue exclusive, meaning a lawsuit can only be brought in that venue. This needs to be considered.	Same.
Attorney's Fees	Does contract provide for prevailing party attorney's fees and costs? This needs to be considered.	Same.
Arbitration or Litigation	Does contract provide for disputes to be resolved by litigation or arbitration? Depending on project, there may be preference for arbitration versus litigation. This needs to be considered.	Same.
Initial Decision Maker, Project Neutral, Dispute Resolution Board	Does the contract require that claims must be resolved by initial decision maker, project neutral, or dispute resolution board prior to arbitrating or litigation the dispute? Size and complexity of project will dictate this.	Same.
Mediation or Conditions Precedent to Litigation or Arbitration	Does contract require mediation or other conditions precedent to litigation or arbitration? This needs to be considered.	Same.
Waiver of Jury Trial	Owner will typically want waiver of jury trial if contract provides for litigation.	Depends on the contractor and forum, but contractor may also want waiver of jury trial.
Force Majeure		
Definition and Scope	How does contract define force majeure events and do such events entitle contractor to additional time and/or money? Also, does the length of a force majeure event entitle contractor to terminate its performance? Owner will want to include language that force majeure events do not entitle contractor to additional compensation and do not constitute a suspension of work that would entitle contractor to terminate its performance.	Contractor will want additional time and, perhaps, money for force majeure events. Contractor will also want right to terminate performance if work is suspended a specific time period as the result of a force majeure event.
Indemnity		
Indemnity Type	Narrow (indemnification limited to the extent caused by negligence or acts of indemnitor); Intermediate (indemnification for acts caused in whole or in part by negligence or act of indemnitor); or Broad (indemnification irrespective of whether negligence or act caused by indemnitor, meaning it requires indemnitor to indemnify for indemnitee's sole negligence) Owner will want intermediate or broad form of indemnification.	Contractor giving owner indemnification will ideally want narrow form of indemnification. Contractor will live with intermediate form of indemnification depending on type and scope of project. Contractor should not want to ever give broad form of indemnification.
Indemnity Scope	Limited to personal injury, sickness, death, and damage to property OR does indemnification potentially extend to EVERYTHING (all loss, damage, claims, etc., irrespective of whether loss caused injury or damage). Typically, indemnification extends to personal injury, sickness, death, and damage to property.	Same.
Insurance	Owner will not want to tie indemnification obligation to insurance coverage. However, owner will want contractor to identify owner as additional insured on liability insurance policies.	Contractor will want liability insurance coverage to ideally cover indemnity obligation. Contractor will also want additional insured status on subcontractor liability policies to cover risk.
Limitation	Owner will want limitation on indemnification obligation to be in at least the amount of contractor's per occurrence insurance limits.	Contractor needs to ensure indemnification limits comport with per occurrence insurance limits. If greater, contractor needs to consider risk.
Compliance with Florida Law	Need to ensure indemnification language for personal injury and property damage comports with Florida Statute s. 725.06.	Same.
Environmental / Hazardous Materials	Owner may not want to give indemnification to contractor. Owner should consider pollution liability insurance to cover risk associated with this indemnification since it is an important indemnification requirement to contractor, especially with existing structures or sites where environmental issues are <i>reasonable</i> concern.	Contractor will typically want indemnification for environmental risks, pollutions, contaminations, hazards and exposures relating to the site to cover sickness, injury, death, penalties, property damage, disposal and remediation, etc.

Liens	Owner will want contractor to indemnify it for subcontractor and supplier liens.	Contractor may want to limit language to reflect that indemnification covers amounts it's been paid. However, if contractor has furnished a payment bond, than contractor can just record a Notice of Bond and this is not a big deal.
Insurance		
Property Insurance (Builder's Risk)	Who is procuring insurance? What risks does it cover? Is Contractor a named insured or a loss payee? Who is responsible for deductible? Does it cover soft costs? Builder's risk needs to sufficiently cover anticipated risks during construction. This is important consideration.	Same.
Waiver of Subrogation	Does waiver of subrogation apply only to property insurance claims? Waiver of subrogation should include property insurance claims, not necessarily claims covered by liability insurance. This is important consideration.	Same.
Type of Insurance and Limits	Does contract require contractor to maintain insurance or insurance limits that are not ordinarily maintained? Does type of project include certain risks that require the contractor to include specific insurance? Type of insurance and limits of insurance is important consideration.	Same.
Additional Insured Status	What does the contractor say regarding additional insured status and will endorsement to policy be required? This is important consideration.	Same.
Liquidated Damages		
Daily Rate	Liquidated damages are designed to cover delays to substantial completion (in particular) that are not ascertainable at the time of the contract. Owner will want daily rate to <i>reasonably</i> compensate owner for such delays.	Contractor will want daily rate to be <i>reasonable</i> and to be sole and exclusive remedy for delays to substantial completion. Contractor will also need to ensure there is certain float in its schedule to offset some delay so as not to be killed by liquidated damages. Thus, contractor will want to ensure that it owns the float in its schedule versus the owner owning the float to offset delays caused by the owner.
Cap on LDs	Owner will not want there to be a cap on liquidated damages. If there is a cap, the cap needs to be at an amount that will <i>reasonably</i> cover owner's losses for delay.	Contractor may want cap on liquidated damages. For example, liquidated damages capped at contractor's fee or capped at a certain amount or a certain percentage of the contract sum.
How is Substantial Completion Defined	Liquidated damages are triggered by delays to substantial completion. Does the contract tie substantial completion to a subjective determination (determined by owner / architect when owner can utilize property for intended purpose) or objective standard (temporary certificate of occupancy, final certificate of occupancy, or certificate of completion)? This depends on the owner.	Contractor will want to tie substantial completion to objective milestone such as issuance of temporary certificate of occupancy that allows owner to utilize project.
Final Completion	Final completion is typically when punchlist is completed. Are there liquidated damages for delays to final completion? This depends on the owner.	Contractor will not want this since final completion typically tied to subjective determination of when punchlist completed after owner already occupying / utilizing property.
No Damage for Delay		
Scope	Owner will want a no damage for delay provision such that the contractor is not entitled to any damages whatsoever for delays and contractor's only recourse is a time extension.	Contractor will not want this as it will want to recover extended general conditions for delays caused by the Owner or the Owner's consultants. If owner is entitled to liquidated damage for contractor-caused delays, contractor will want extended general conditions for owner-caused delays.
Payment		
Time Frame	Owner will want to pay monthly after contractor complies with conditions precedent to payment.	Contractor will be fine with monthly payment. Contractor will not want payment to have to be conditioned on approval by third-party if it can avoid it. Contractor will want clear language re: time of payment.
Retainage	Owner will want to withhold retainage, typically 10% of each progress payment, to be released at final payment to cover potential losses such as contractor's defaults or failure to complete punchlist.	Contractor will want owner to release some retainage at 50% completion and/or will not want the owner to withhold retainage on the contractor's general conditions and profit. If contractor provided performance bond, this should be leveraged to argue these points since performance bond provides protection to the owner for non-performance issues.
Payment Withholdings	Owner will want to be able to withhold from payments anything deemed necessary to protect its interests.	Contractor will want payment withholdings to be <i>reasonable</i> and more objective so as not to give owner unfettered discretion to withhold payment for work performed.
Representation of Payment to Subs	Owner will want contractor to certify that contractor has paid in full all subs that performed work under it.	Contractor should consider clarifying that it agrees to pay all undisputed amounts in full to subs to avoid any issue with amounts withheld from subs. Notwithstanding, if amounts withheld are pursuant to the subcontract, contractor can still represent it paid subs in full since it paid sub based on terms and conditions of subcontract. Contractor will not want to have to advise owner of any amounts it is withholding from subs in order to exercise such rights under a subcontract.
Termination & Suspension		
Owner Termination for Cause	Owner will want to be able to terminate contractor for cause based on a variety of factors. Owner will want factors to be more discretionary in nature.	Contractor will want to ensure there is <i>reasonable</i> notice to cure provision and that cure period is extended (particularly with performance-related defaults) if contractor is diligently undertaking efforts to cure source of default.
Owner Termination for Convenience	Owner will want option to terminate contract for convenience. Owner will want to include language that any termination for cause that was wrongfully exercised shall be converted to a termination for convenience. Owner will want to minimize costs to contractor to work performed through date of termination and will not want to pay profit on work not performed.	Contractor will want to ensure if owner exercises option, it is receiving compensation for worked performed through date of termination and costs incurred because of the termination such as demobilization costs. Contractor will also want to recover profit for unperformed portion of the work.
Contractor Termination for Cause	Owner will want to limit contractor's bases to terminate for cause, typically to non-payment.	Contractor will want to terminate for cause based on non-payment from owner or for an unreasonable suspension in the work, irrespective of the cause of the suspension.
Suspension	Owner will want right to suspend work for specific period of time and will want to minimize costs associated with suspension.	Contractor will want right to recover costs (general conditions) associated with owner suspension and will want right to terminate work if suspension lasts longer than specified time period.
Warranty		
Time	Owner will want broad warranty that extends as long as possible (although, warranty period is typically 1 year). Owner may want warranty to extend from final completion.	Contractor will want warranty to extend 1 year from substantial completion and will want to exclude warranty for damage caused by owner, abuse by owner, routine wear and tear, or failure of owner to maintain.
Statutory Warranties (e.g., Condo Warranty in Florida Statute s. 718.203)	Keep in mind that the warranty language does not displace condominium statutory warranties; however, such statutory warranties may be less broad than the warranty the owner wants from the contractor during the 1 year warranty period. This is a consideration to keep in mind.	Contractor will not want to expand contractual warranty beyond 1 year irrespective of any statutory warranty obligation.

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